

# **TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**Minutes  
March 20, 2008  
1:30 p.m.**

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The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, March 20, 2008 in Nashville, Tennessee at 1:30 p.m. Chairman John Jones, Commissioner Cynthia Bond and Commissioner Harlan Mathews were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, SAC Mike Cawthon, and B. V. Cathey, III were present.

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- 1. The Minutes for February 21, 2008 Commission Meeting were approved.**
- 2. NEW BUSINESS**

## **RETAIL**

### **A. CRAFT CENTER LIQUOR AND WINE GATLINBURG, TENNESSEE (SEVIER COUNTY)**

**Seller/Licensee:** William Keith Cox  
**Applicant:** Marsh and Tanya, LLC  
**Members:** Tanya McCarter and Marsha Wilson

Before the Commission is a request for a transfer of ownership of the retail store located at 446 E. Parkway, Suite 2, in Gatlinburg, Tennessee. Tanya McCarter and Marsha Wilson desire to purchase the business from William Cox for \$250,000 plus inventory. Financing is based upon a line of credit with Tennessee State Bank. If approved, business will be conducted as a LLC. The applicant will be sub-leasing the property from Mr. Cox for a period of five years at \$2500/month. It should be noted that Ms. McCarter's husband owns and operates Parkway Liquor Store, also in Gatlinburg. All documentation has been submitted, with the exception of the following:

- a. Line of credit with Tennessee State Bank;
- b. Copy of newspaper notice;
- c. Executed sub-lease agreement;
- d. Sales tax number.

### **Discussion/Action Taken:**

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. Line of credit with Tennessee State Bank;
- b. Copy of newspaper notice;
- c. Executed sub-lease agreement;
- d. Sales tax number.

Chairman Jones made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded and the motion passed with 3 ayes. Commissioner Mathews stated that he wanted to make a statement at the conclusion of the meeting regarding this matter. Chairman Jones stated that this was acceptable to Commissioner Bond and himself.

**B. KIDD WINE AND SPIRITS  
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

**Applicant: Kidd, LLC**  
**Members: Kevin and Yolanda Kidd**

Before the Commission is a request for a new retail store located at 1309 Bell Road, Suite 209, in Nashville, Tennessee. Kevin and Yolanda Kidd wish to initially invest \$100,000, and if approved, operate the business as a LLC. Financing is based upon existing personal funds in savings. The applicant is leasing the property from Blue Dog Investments for a period of five years at beginning at \$2908/month and increasing to \$3178/month by the end of the term. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgment of the rules and regulations;
- c. Use and Occupancy permit;
- d. Verification of savings account balance.

**Discussion/Action Taken:**

Kevin Kidd was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. TABC Inspection;
- b. Acknowledgment of the rules and regulations;
- c. Use and Occupancy permit;
- d. Verification of savings account balance.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded and the motion passed with 3 ayes.

**C. THE NEW CORKSCREW  
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

**Applicant: Henry B. Cowles**

Before the Commission is a request for a new retail store to be located at 1 Mina Avenue, in Memphis, Tennessee. Henry Cowles wishes to initially invest \$250,000, and if approved, will operate the business as a sole proprietorship. Financing is based upon an IRA with Stephens, Inc. The applicant is leasing the property from Barbara Cowles for a period of five years at \$1000/month. It should be noted that the Memphis Alcohol Commission initially denied Mr. Cowles certificate of compliance stating that the proposed location was too close to Butler Park; however, Chancery Court overturned the city's decision and ordered the certificate of compliance issued. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations.

**Discussion/Action Taken:**

Henry B. Cowles was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection and the Acknowledgment of the Rules and Regulations.

Commissioner Bond made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded and the motion passed with 3 ayes.

**3. DENIAL OF SERVER/EMPLOYEE PERMIT**

**A. JEFF MONEYSMAKER**

Mr. Moneymaker is appealing the decision of the TABC staff to deny his application for an employee permit. TABC staff denied Mr. Moneymaker's application based on a July 29, 2005, felony conviction for attempt to obtain controlled substance by fraud. T.C.A. §57-3-703 prohibits the issuance of an employee permit to anyone who has been convicted of any felony within five years of the date of the application.

**Discussion/Action Taken:**

Director Elks stated that Jeff Moneymaker applied for an employee permit card for a retail package store on February 27, 2008 in Knoxville. The application was denied when he admitted that he had a felony conviction within the past five years. Mr. Moneymaker was convicted of attempt to obtain a controlled substance by fraud, which is a Class E Felony. Mr. Moneymaker indicated that the offense occurred in 2002; however, he

did not appear before court and a decision made until 2005. Therefore, the denial is based on the date of the conviction, so it has been within the date of five years of the application and the staff denied the application. Director Elks stated that Mr. Moneymaker submitted a letter requesting the hearing but he did not appear. Director Elks requested that the Commission issue a default judgment.

Commissioner Mathews made a motion to declare default judgment. Commissioner Bond seconded the motion and it passed with 3 ayes.

Commissioner Mathews made a motion to deny the retail employee permit card. Commissioner Bond seconded the motion and it passed with 3 ayes.

**B. DANA CAGLE**

Ms. Cagle is requesting a reconsideration of the Commission's decision to uphold deny her application for a server permit. TABC staff denied Ms. Cagle's application based on an April 2, 2003, conviction for selling a beer /alcoholic beverage to a minor. T.C.A. §57-3-704 prohibits the issuance of a server permit to anyone who has been convicted of a crime relating to the sale of alcoholic beverages or beer within eight years of the date of the application.

**Discussion/Action Taken:**

Dana Cagle and Adam Dread, attorney, were present. Assistant Director Carolyn Smith stated that Ms. Cagle was on the agenda for the Commission meeting in February 2008 and has appealed the denial of the server permit card by the TABC staff. Ms. Cagle had contacted the agency in mid February about the denial and requested to be on the February agenda. Assistant Director Carolyn Smith stated that the staff had sent the confirmation letter and Ms. Cagle indicated that she did not receive notification of the meeting.

Ms. Cagle requested to be put on the March agenda for the Commission to hear her appeal. Assistant Director Smith stated that the staff had originally denied her application because she had disclosed an April 2003 conviction for a sale to a minor, which requires an eight year period of time to pass before a server permit card can be issued under the statute.

Commissioner Mathews made a motion to hear the reconsideration. Commissioner Bond seconded the motion and it passed with 3 ayes.

Adam Dread, attorney, stated that Ms. Cagle has not had any convictions since her sale to a minor. Mr. Dread requested that Ms. Cagle be issued the employee server permit. Chairman Jones stated that the law would not allow Ms. Cagle to be a waitress at an establishment that has liquor by the drink license. She would not be allowed to serve alcoholic beverages. Commissioner Bond made a motion to uphold the revocation of the server permit. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**4. ADMINISTRATIVE CITATIONS**

**A. DONALD RAY McCALLISTER**

On February 8, 2008, TABC Agent William Gammel observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the retail store doing business as Christmas Spirits Wine and Liquors, in Mason, Tennessee. The Respondent checked the minor's identification, but still sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

**Discussion/Action Taken:**

Assistant Director Smith stated that Donald Ray McCallister has paid the administrative citation; therefore, no action is necessary.

**B. DANA KEINKHAMMER**

On February 7, 2008, TABC Agent Bobbie Rogers observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the retail store doing business as The Liquor Store in Dyersburg, Tennessee. The Respondent did not check the minor's identification, but still sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

**Discussion/Action Taken:**

Assistant Director Smith stated that Dana Keinkhammer has paid the administrative citation; therefore, no action is necessary.

**C. RUSSELL McINTOSH**

On February 8, 2008, TABC Agent Nina Williamson observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the retail store doing business as West Tennessee Liquor Company, in Covington, Tennessee. The Respondent did not check the minor's identification, but still sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

**Discussion/Action Taken:**

Assistant Director Smith stated that Russell McIntosh has paid the administrative citation; therefore, no action is necessary.

**D. ALBERTO JOSE MORENO**

On February 8, 2008, TABC Agent B.V. Cathey observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the restaurant doing business as Casa Mexicana Mexican Restaurant, in Atoka, Tennessee. An administrative citation was issued, and remains unresolved at the time of this agenda.

**Discussion/Action Taken:**

Alberto Jose Moreno was not present. Assistant Director Smith stated that Alberto Jose Moreno was issued an administrative citation by SA B. V. Cathey of the TABC Memphis office. Mr. Moreno was employed at the Casa Mexicana Mexican Restaurant in Atoka.

SA Cathey testified that on February 8, 2008 he was doing sales to minor investigations throughout the West Tennessee area. B.V. Cathey testified that his informant did enter the establishment and was able to purchase a margarita from Alberto Jose Moreno. B. V. Cathey testified that Mr. Moreno did not request any identification.

Assistant Director requested that a default judgment be held since Mr. Moreno did not appear at the hearing.

Commissioner Mathews made a motion to grant a default judgment. Commissioner Bond seconded the motion and it passed with 3 ayes.

Assistant Director Carolyn Smith requested the Commission to uphold the \$250 fine and impose a 90 day suspension on the server permit card.

Commissioner Mathews made a motion to uphold the \$250 fine and the 90 day suspension on the server permit card.

**E. BOBBY GENE MYRICK**

On January 24, 2008, TABC Agent Bobbie Rogers observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the retail store doing business as Mineral Wells Package Store, in Paris, Tennessee. The Respondent did not check the minor's identification, but still sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

**Discussion/Action Taken:**

Assistant Director Smith stated that Bobby Gene Myrick has paid the administrative citation; therefore, no action is necessary.

**F. JASON SCOTT DYER**

On January 24, 2008, TABC Agent Bobbie Rogers observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the retail store doing business as The Loft Wines and Spirits, in Paris, Tennessee. The Respondent did not check the minor's identification, but still sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

**Discussion/Action Taken:**

Assistant Director Smith stated that Jason Scott Dyer has paid the administrative citation; therefore, no action is necessary.

**5. BUDGET**

**6. CONSENT ORDERS**

**7. PENDING MATTERS LIST**

**8. MISCELLANEOUS – Brinkman's Wine and Spirits -**

This matter appeared before the Commission as miscellaneous item in the March, 2008 minutes. Timothy Brinkman was present at that meeting, and requested to be heard. Executive Director Danielle Elks stated that Timothy Brinkman had made application and had desired to be on this month's agenda. However, upon initial review of the application, Director Elks stated that there were problems with the newspaper notice and, thus, the Certificate of Compliance as well. Director Elks stated that she had informed Mr. Brinkman that if certain things happened by Monday, March 17, 2008, a possibility existed that his application would be placed

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on the agenda as an addendum item. However, those requirements were not met; therefore, Mr. Brinkman's application was not placed on the agenda.

Specifically, Mr. Brinkman's initial newspaper notices were not run in a local paper for Franklin. The affidavit from the newspaper was not accurate. The subsequent newspaper notice did not reflect a time when the Certificate of Compliance application would be heard by the local municipality. Therefore, the Certificate of Compliance issued at this time is not valid.

Mr. Brinkman requested that the Commission approve the application conditionally upon the issuance of the certificate of compliance. However, Director Elks stated that because the requested documents had not been submitted timely, the review of the application was not complete and that she could not recommend a conditional approval of the application. After further discussion, Director Elks suggested that the Commission allow the staff, in this one incident, to approve the application and issue the license if the final review indicates the application is complete and satisfactory.

Commissioner Mathews made a motion to allow the Commission to direct Director Elks to have authority to issue this permit if the application meets all requirements, and if and when Director Elks issues the permit that she report back to the Commission her action before the April 24 Commission meeting. Chairman Jones seconded the motion and it passed with 3 ayes.

### **DUAL HUSBAND & WIFE RETAIL PACKAGE STORE OWNERSHIP**

Commissioner Mathews stated that the statutes state that no retailer license under the appropriate section of the Code shall directly or indirectly operate more than one licensed retail business in this State. Commissioner Mathews stated that indirectly means any kind of interest including stock ownership, loan, partners' interest or otherwise. However, husbands and wives may be using their ownership of separate retail package stores to limit their competition in areas of the State. Commissioner Mathews stated that he has concerns about what the words mean and how the Commission should interpret the law.

Commissioner Mathews questioned whether the TABC should ask the Attorney General to give the Commission an opinion on how this language relates to a husband and wife each owning a store or the other spouse's attempting to purchase another retail store.

Commissioner Mathews suggested that staff give notice that the Commission will withhold action on any future husband and wife applications until the Commission gets the opinion from the Attorney General's office, and abide by what the ruling states. Further, Commissioner Mathews stated he wants to be recorded as voting yes on the earlier application because they had all the paperwork prepared.



Director Elks asked if that statement applied only to future applications. Director Elks stated that if staff has pending investigations on existing stores where this issue may arise, would the staff stop such investigations or would the staff complete such investigations where ownership may be in two or more stores.

Commissioner Mathews stated that he would want to stop the dual ownership as soon as is possible but not to impair any obligation of contract. Commissioner Mathews stated that whatever has already happened would be grandfathered in.

Chairman Jones stated that he would like for the Commission to have this matter to be discussed in the April Commission meeting. Chairman Jones stated that he wanted to allow time for anyone that has an opinion on this matter, to be allowed the opportunity to speak to the Commission.

#### **SALE OF WINE IN GROCERY AND CONVENIENCE STORES**

Chairman Jones stated that the Legislature has introduced a bill to allow sale of bottles of wine in grocery and convenience stores. Chairman Jones requested the ramifications to the agency, existing retailers and wholesalers if the bill passed.

If the bill passed, Director Elks stated that a new class of retail licenses would exist for grocery stores. Director Elks stated that it is the staff's understanding that based on talks with the Grocer's Association, approximately 450 to 500 additional licensees would be issued. Director Elks stated the staff has submitted fiscal notes that the agency would need additional personnel. Further wine sales in grocery stores would only exist in areas that have passed a referendum for retail sales.

Licensed retailers have expressed that the smaller stores would go out of business because sales would be taken from them. Further issues exist for grocery stores: for example, Tennessee's prohibitions of having an interest in more than one retail store, as well as the two-year Tennessee residency requirement. Many grocery chains are owned by out-of-state stockholders, and obviously control more than one location.

#### **9. DATE OF NEXT MEETING – April 24, 2008 at 1:30 p.m.**

There being no further business the meeting was adjourned.

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John A. Jones  
Chairman

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Shari Danielle Elks  
Executive Director